

State of New Jersey

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In the Matter of STARLIGHT EVENTS,)
LLC. Petition For A Declaratory Ruling)
Pursuant to N.J.S.A. 52:14B-8 Concerning)
The Proposed Operation Of A Casino Hotel)
Alcoholic Beverage Premises)

DIRECTOR'S OPINION

Scott Silver, Esq., P.C., Attorney for Starlight Events, LLC

*Timothy Ficchi, Deputy Attorney General
Division of Gaming Enforcement*

On September 1, 2010 Starlight Events, LLC ("Starlight"), which proposes to use the trade name Scores - Atlantic City ("Scores"), filed a Petition with the Casino Control Commission ("Commission") seeking a declaratory ruling as to whether Scores' proposed use of a CHAB licensed premises to be located at Trump Taj Mahal Casino Resort ("Taj Mahal") is permissible under the Act and its regulations. Starlight had previously filed an application for a Casino Service Industry ("CSI") license and an application for a Casino Hotel Alcoholic Beverage ("CHAB") license with the Commission on July 26, 2010 and July 28, 2010, respectively. On February 1, 2011 the Casino Control Act, N.J.S.A. 5:12-1 et seq. ("Act"), was amended and many of the responsibilities of the Commission, including those relating to CHAB licensure, were transferred to the Division. In addition, jurisdiction to issue rulings regarding casino operations, including those relating to entertainment, is now vested exclusively with the Division. See N.J.S.A. 5:12-76k. On October 27, 2011,



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Scores filed an Amendment to Petition with the Division (collectively the "Petition").¹ This opinion addresses Starlight's Petition for declaratory relief, not its request for a CHAB license. For the reasons set forth more fully below, I grant the relief sought in the Petition.

Background

Scores is a franchise with five locations in New York City, Chicago, Baltimore, New Orleans and Tampa, operating what are commonly referred to as "gentlemen's clubs." (Amendment to Petition at 5). Each of the five Scores clubs are independently owned and operated and there is no common ownership or control among the five clubs (Amendment to Petition at 6). The majority owner of the New York City Scores club is the sole owner of Starlight, the entity filing this Petition (Amendment to Petition at 9 and 10). Starlight has entered into a licensing agreement with Scores Holding Company, Inc. ("SHCI"), a publicly traded corporation (Amendment to Petition at 6 and 7). SHCI's license agreement with the existing five Scores clubs, as well as that with Starlight, imposes no operational standards or requirements and provides that each individual licensee is responsible for compliance with all applicable laws regarding operation (Amendment to Petition at 8).

Scores gentlemen's clubs offer entertainment to its predominately male patrons in the form of sensuous dancing by its female entertainers/dancers. The existing Scores facilities include a restaurant with a bar selling alcoholic beverages. The Petition outlines Starlight's anticipated operation of a Scores at Taj Mahal which would include a bar area, hence Scores' earlier request for a CHAB license. Due to physical space constraints of the proposed location within Taj Mahal, Starlight's plan would not include a restaurant for the Taj Mahal location. Starlight represents in its Petition that it intends to offer a first-class entertainment experience in an upscale environment. To that end, Starlight represents that its proposed facility will be "richly-furnished, first class, exceptional," and that there will be a "significant" admission fee and a required dress code for customers (Petition at 3).

Starlight states in its Petition that its dancers/entertainers will be clothed as follows: "[e]ntertainers start their performance in an evening gown and, by the end of the dance, generally will be clothed in a g-string or thong bottom and pasties, all as permitted by N.J.A.C. 19:43-15.1(b)(3)" (Petition at 3).² The entertainers are to be instructed prior to a performance not to fondle themselves nor simulate sexual activity. What is commonly known as "lap dances," (i.e., dancers performing very close to and rubbing up against the seated patron) which Scores does offer at its New York establishments, would not be

¹As a result of the February 1, 2011 legislative changes, the Amendment to Petition was assigned a different filing number, PRN 3001102, than that assigned by the Commission to the original Petition (PRN 2441002).

²Pursuant to the February 1, 2011 amendments to the Act, this regulation was readopted by the Division without change at N.J.A.C. 13:69C-15.1.

offered in New Jersey. Instead, if the patron requests a "table-side dance," the dancer would dance close to the patron without physical contact. Again, as with her stage presentation, during the "table-side dance," the dancer would not fondle herself or simulate sexual activity (Petition at 4). The dancers would not be permitted to touch the patron during their routines other than "tastefully," in passing, and only on the shoulders, arms, head and neck. Tips would be accepted by the dancer with placement of the tip by the patron made only in a garter worn by the dancer (Petition at 4). In essence, the Petition represents that there will be no topless entertainment and the dancers/entertainers will not engage in simulated sexual acts. Starlight represents that it will set forth all of these limitations and requirements in writing and provided same to all of its entertainers when they are hired (Petition at 5).

In addition to entertainment offered on the main stage area, Starlight will also offer entertainment in private rooms. The private rooms would either be large, for bachelor parties and other social events, or small, for private dances with one customer. Regardless of the size of the room, the restrictions as to costume and conduct for the dancers would be identical to that which would be adhered to in the more public area (Petition at 5). With regard to dancer and patron safety, as well as compliance with Division regulations regarding conduct, Starlight security personnel will be notified whenever customers are present in one of the private rooms (Petition at 5). Starlight represents that it fully accepts the Division's prohibitions regarding topless entertainment and other restrictions that apply regarding what constitutes prohibited behavior, and is confident in its ability to stay within those prohibitions.

Legal Analysis

Due to the uniqueness of its entertainment offering and the anticipated scrutiny of the regulators, Starlight seeks a ruling that the entertainment to be offered would be consonant with the Division's regulations regarding entertainment in a Division-CHAB licensed establishment.

The Division has authority over all issues relating to the licensure of those who seek to sell alcoholic beverages in a casino hotel complex as well as the manner in which such alcoholic beverages are handled and provided to the public.

The Act, at *N.J.S.A. 5:12-103a* so provides:

- a. Notwithstanding any law to the contrary, the authority to grant any license for, or to permit or prohibit the presence of, alcoholic beverages in, on, or about any

premises licensed as part of a casino hotel shall exclusively be vested in the division.³

Similarly, the Division has exclusive regulatory oversight with respect to all entertainment activities occurring in a casino hotel. A long-standing regulation has been in place prohibiting certain entertainment activities anywhere within the casino hotel complex, without discriminating between casino licensees and non-casino licensees or CHAB and non-CHAB license holders. That regulation, *N.J.A.C. 13:69C-15.1* (formerly *N.J.A.C. 19:43-15.1*), titled "Prohibited entertainment activities," states:

- (a) No motion picture shall be exhibited within any casino hotel complex either by direct projection or by closed circuit television which would be classified as obscene material pursuant to the definition contained in *N.J.S.A. 2C:34-2*.
- (b) No live entertainment shall be permitted within a casino hotel complex which includes:
 - 1. The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.
 - 2. The actual or simulated touching, caressing or fondling of the breasts, buttocks, anus or genitals.
 - 3. The actual or simulated display of the pubic hair, vulva, genitals, anus, female nipple areola.⁴

Starlight's Petition is unambiguous in its assertion that its proposed entertainment activities at Scores at Taj Mahal would comply in all respects with the prohibitions set forth in the regulation.

By its express language, this regulation does not prohibit the wearing of pasties and thongs by dancers/entertainers within the casino hotel complex and clearly contemplates that some entertainment offerings in a casino hotel complex will be suggestive. In enacting the above regulation, the Commission at the time incorporated the concept of the "Las Vegas-style revue," long a part of legalized casino gaming in Nevada, into the New Jersey casino entertainment structure. While the above regulation is mindful of the type of entertainment traditionally offered in casinos, the regulation nonetheless prohibits topless entertainment. At its essence, the regulation allows for entertainment productions with

³The Act also provides that if the statute or the Division's regulations are silent on an issue involving alcoholic beverages, the ABC statute and regulations are applicable. *N.J.S.A. 5:12-103d; N.J.A.C. 13:691-2.1*.

⁴ The language of this regulation has not changed in substance since it was first adopted in 1978.

minimal clothing for male and female entertainers, yet still forbids topless costumes for women, or complete nudity, whether male or female.

The Division has not previously taken a formal position on the use of pasties in a casino CHAB outlet. Similarly, we have not found any ruling indicating that the Commission has ever formally addressed this legal issue. The Division recently reviewed entertainment offerings in CHAB outlets in various casinos and found some that contain suggestive dance routines and very abbreviated costumes. For example, as part of a recent limited engagement show, aimed at a predominately male audience, female performers wore costumes consistent with various themes (cowgirl, rocker, flight attendant) but similar in nature to lingerie.⁵ During some routines, the female performers wore pasties and thongs. At no time during their routines were the performers completely naked. Some performers danced using a pole. It is difficult to materially distinguish such existing entertainment from Starlight's proposal.

Under the Act, the quality of the relatively few casino hotels, including their thirty-nine (39) CHAB licensee tenants, are statutorily mandated to be maintained to the highest standard:

[T]he division shall require each casino licensee to establish and maintain an approved hotel which is in all respects a superior, first-class facility of exceptional quality which will help restore Atlantic City as a resort, tourist and convention destination. *N.J.S.A. 5:12-83i* (requirements of an "Approved Hotel")


Starlight's representation that it anticipates an expenditure of approximately three million (\$3,000,000) dollars (Petition at 6) for its proposed facility at Taj Mahal indicates the quality of the facility it intends to offer to the public and foreshadows the care to which it would exercise to maintain that quality. In addition, the limited number of CHAB licensees allows the Division to effectively regulate the conduct at each location. Thus, the Division has the authority and resources to initiate steps to prevent the offering of entertainment in a licensed facility which would result in a public perception of tawdriness or would otherwise denigrate the image of casino hotels, and legalized gambling, in the State.

It is clear that our Legislature recognized that the casino environment is unique, and the Act bestows upon the Division exclusive authority over all entertainment conducted within a casino hotel, including in locations that serve alcohol. The language of *N.J.A.C. 13:69C-15.1*, while prohibiting topless entertainment within the entire casino hotel complex, permits dancers/entertainers to wear pasties and thongs. Therefore, I find that the proposed operation of Scores at Taj Mahal by Starlight as set forth in its Petition does not violate *N.J.A.C. 13:69C-15.1* as it would not include complete nudity, or topless outfits, and

⁵ "X-Burlesque" performed at Showboat's House of Blues.

would not involve prohibited activities such as extended or inappropriate patron contact or simulated sex.

I have entered an Order on this same date memorializing this decision. My decision is limited to Starlight's request for declaratory relief in the Petition and takes no position on whether it is qualified to hold a CHAB license. That determination will be made after I review the results of a comprehensive background investigation conducted by the Division.

By: 
David Rebeck
Acting Director

Date: December 23, 2011